

# **Exhibit 65**

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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AUTHENTICOM, INC.,

Plaintiff,

-vs-

Case No. 17-CV-318-JDP

CDK GLOBAL, LLC and  
THE REYNOLDS AND REYNOLDS COMPANY,

Madison, Wisconsin  
June 27, 2017  
8:04 a.m.

Defendants.

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STENOGRAPHIC TRANSCRIPT OF SECOND DAY OF EVIDENTIARY HEARING  
(MORNING SESSION)

HELD BEFORE CHIEF U.S. DISTRICT JUDGE JAMES D. PETERSON

APPEARANCES:

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1 the system. What I have done for Authenticom is create a user  
2 ID just for Authenticom that has access to a single function,  
3 ENG, which is basically -- it's an English statement processor  
4 where you type your query in a language they don't call SQL.  
5 They call it English. You type an English statement, and the  
6 results of your question is spilled to the screen that they then  
7 scrape.

8 THE COURT: What is English? You mean like --

9 THE WITNESS: English is CDK or ADP's flavor or name  
10 for SQL, Structured Query.

11 THE COURT: Okay. So you still have to know how to  
12 write a SQL query.

13 THE WITNESS: Right. It's close, you know, like list,  
14 and then you say the file name you want to list the data from,  
15 and then you put your parameters. Maybe you only want a day's  
16 worth of data. You don't want to spill all the data. You just  
17 want updates and then the fields you want, and that's how  
18 they're written.

19 THE COURT: Okay. So there's a common-sense dimension  
20 to it, but you can't -- you need some training on how to present  
21 what they call an English query.

22 THE WITNESS: Right. And I've been to their system  
23 administrator classes in Clackamas, Oregon.

24 THE COURT: So it's not like just doing a Google  
25 search that you --

1 THE WITNESS: No, no, no, no. It's a flavor originally  
2 designed for a fossil of an operating system called Pick that is  
3 still running on their systems today.

4 THE COURT: Okay.

5 THE WITNESS: And that's the query language.

6 THE COURT: Okay. I get it.

7 THE WITNESS: It's called English.

8 THE COURT: I got it.

9 BY MS. GREGOR:

10 Q How does the level of access that Authenticom has compare  
11 to your access as the IT administrator for the dealership?

12 A I have the keys to the kingdom. There's not a feature that  
13 I can't run, full access to every single thing on every single  
14 account. Authenticom has access to limited accounts and to a  
15 single function, ENG, for the purpose of retrieving the data  
16 that I need them to retrieve so that they can -- I like to call  
17 it feeding the children. All the third-party vendors that need  
18 the data, I call that feeding the children. So they gather the  
19 data, normalize the data, check the addresses against the NCOA  
20 database, and then send the feeds to a couple dozen third-party  
21 vendors that I use.

22 Q Did you hear testimony yesterday about manual reporting?

23 A I did hear that. I heard that quite a bit, and I have to  
24 say I understand that CDK and Reynolds offer a way for me to do  
25 that manually. Here is the thing about manual: Manual doesn't

1 work. Take the case of the open recall vendor that was here  
2 yesterday. It's 50 stores. He's got to find 50 people, one in  
3 each store, to manually run a report, grab the data, and then  
4 transmit it to Authenticom. These people can't have a day off.  
5 They can't make a mistake, can't have a vacation. It doesn't  
6 work unless you can automate the process. You have to be able  
7 to automate the process.

8 In the example of -- I'll give you an example. If I want  
9 to get every repair order created every single day and I want  
10 the data of all the repair orders that were opened on that day,  
11 I have to get that data after the service department closes so  
12 they're not creating any more repair orders but before the job  
13 stack runs and rolls all the closed ones into the history file.  
14 That has to be done between 8:00 and 10:00. You're not going to  
15 have an employee there between 8:00 and 10:00 to do that  
16 manually every single day, so manual has no value. If you're  
17 going to do data extractions, it has to be automated. The  
18 minute that CDK takes away the ability to automate these data  
19 extractions, they've taken away a valuable tool that I've had  
20 for almost 30 years.

21 Q Can we have Plaintiff's Exhibit 152 on the screen, please?  
22 While we're pulling it up, Mr. Fitkin, did you submit a couple  
23 of declarations in this proceeding?

24 A I did.

25 Q And when was the last time you reviewed those?

1 Q How about from a cost perspective? How has CDK's blocking  
2 affected Walter's Automotive Group?

3 A Well, I'll give you an example. At the beginning of the  
4 year, we were looking at a service appointment software program,  
5 and we chose not to go with it -- the company was XTime --  
6 because of the huge data access fees that were added on because  
7 we were a CDK store, those additional charges. Now, I had  
8 mentioned that I understand that Authenticom charges \$35 a month  
9 for a fee. Since then and now, the manufacturers have insisted  
10 that we go with a program that has an online ability to create a  
11 service appointment, so we had to go with XTime. We were forced  
12 into it by Porsche and by Audi, and because of that we had to  
13 sign a contract with XTime. Just one rooftop, over \$400 in data  
14 access fees imposed by CDK on XTime passed directly back to me  
15 for one rooftop for something that used to cost \$35. That's why  
16 the dealerships are up in arms. They're being not only charged  
17 for a system to run their business, tens of thousands of dollars  
18 a month, but are now faced with thousands upon thousands of  
19 dollars in data access charges imposed by CDK to get their own  
20 data to do business.

21 Q Is it important to you, somebody who works for dealerships,  
22 to have choice in the vendors and integrators that you work  
23 with?

24 A It is because without competition, they're going to get  
25 away with charging that kind of money, and with competition it

1 would have to fairly charge for the service. Now, I understand  
2 the desire to guard the gate and guard the data. I do get it.  
3 It does make sense, but I trust Authenticom a hundred percent.

4 CDK and Reynolds -- Reynolds has always been like this -- I  
5 know that from past -- but CDK had never treated the customers  
6 in this manner. This is new as of recent, and I'm very  
7 surprised by it. I'm not surprised by Brockman treating his  
8 customers that way because he always has. He's always treated  
9 the data like it was his data. I converted three UCS stores in  
10 Las Vegas to CDK without a drop of data coming over because I  
11 couldn't get it out. That was the most --

12 THE COURT: What are UCS stores?

13 THE WITNESS: In Las Vegas it was Mercedes-Benz of  
14 Henderson, Fletcher Jones Imports on Sahara, and Fletcher Jones  
15 Toyota on Sahara.

16 THE COURT: So USC was the dealer group?

17 THE WITNESS: USC was owned by Bob Brockman. Reynolds  
18 was its own company, which was a great company. I had seven  
19 stores on Reynolds that we bought in an acquisition that I later  
20 converted to CDK so all the stores were on one. We got all the  
21 data. They were a great company, Reynolds and Reynolds, until  
22 the day Brockman bought them and selectively kicked off the  
23 customers they didn't want anymore that they didn't see value in  
24 and kept the ones that they wanted and imposed all these rules  
25 that treated the data like it was their data. They've always

1       been a company that did not allow you to get at your data.

2               MS. GREGOR: We pass the witness. No further  
3       questions.

4               THE COURT: Let me ask you one question before we go  
5       over for your cross-examination. Why wouldn't you make the  
6       choice, if you're unhappy with CDK because they are grabby about  
7       the data like Reynolds was, why wouldn't you go to a DMS  
8       provider that had a more open attitude and allowed --

9               THE WITNESS: Real story?

10              THE COURT: Yeah.

11              THE WITNESS: If you want to run a car dealership in  
12       today's world, there's really only two viable choices, Reynolds  
13       and Reynolds and CDK. Until somebody really builds something  
14       that will do it, those are your only choices.

15              THE COURT: There's testimony that 28% of the market is  
16       non-Reynolds/CDK.

17              THE WITNESS: I understand that.

18              THE COURT: So more than a quarter of dealers are using  
19       somebody else.

20              THE WITNESS: I understand that but --

21              THE COURT: So what's wrong with those people?

22              THE WITNESS: There's a lot of bad press where people  
23       that have gone to that -- other companies, a lot of them come  
24       back to either CDK or Reynolds because CDK and Reynolds has been  
25       doing this for 30, 40 years, and these companies are trying to



1 do something that is so monumental.

2 THE COURT: You're talking about the --

3 THE WITNESS: To build something that would run a car  
4 dealership is a monumental task. There's so many moving parts.  
5 You have your parts inventory, you have your manufacturers, you  
6 have your data -- there is -- it is so complex that people have  
7 gone to the 28%, it's not really worked out for them, and a lot  
8 of them come back. CDK and Reynolds can attest to that. In  
9 fact, I think they put something up on the board about how many  
10 of them come back. It's not viable. There's not really a  
11 viable choice to truly handle the accounting, the entire service  
12 department, the entire parts department, and sales. In the case  
13 of CDK, their offering for sales is so poor that we use another  
14 DMS just for sales called Advent Resources. They've never been  
15 able to bring something to fulfill that need to my past employer  
16 or my current employer, both on Advent, because the product is  
17 so poor.

18 THE COURT: That's CDK you're talking about.

19 THE WITNESS: Yeah. I went to all 20 of the Fletcher  
20 dealerships and put them on CDK's front end and went back to all  
21 20 of them, put them back on Advent because the people in the  
22 sales department screamed how bad it was.

23 THE COURT: And so with the 28%, the minority of the  
24 market that's non-Reynolds/non-CDK, they're even worse is what  
25 you're saying.

1 THE WITNESS: Yes. They do not have a product that  
2 will successfully run a car dealership, in my opinion. It's  
3 either CDK or Reynolds are your only choices. They own the  
4 market.

5 THE COURT: Now, one last clarification before I turn  
6 you over for cross-examination. I may misuse terms here. So I  
7 asked you with Walter's Automotive Group how many dealerships it  
8 had, and you said there were four.

9 THE WITNESS: Correct.

10 THE COURT: How many stores? And when people say  
11 "rooftops," does that mean like one location so you've got --  
12 explain that to me.

13 THE WITNESS: I'll give you an example. On Adams  
14 Street we had one rooftop, so it's one account, one contract,  
15 but there was a Porsche and an Audi dealership under the  
16 rooftop.

17 THE COURT: Okay.

18 THE WITNESS: Now that rooftop has moved on to Indiana,  
19 the Porsche dealership in a brand new store, so they're not  
20 under one rooftop, but they still have one CMF, which is, you  
21 know, an account. So rooftop generally means one franchise, but  
22 it could mean more.

23 THE COURT: Okay.

24 THE WITNESS: You could have four franchises under a  
25 rooftop.

1 uses offer a secure service?

2 A Oh, absolutely. It's brutally important to us. We know  
3 it's important to the dealer. It's important to our reputation.

4 Q To the best of your knowledge, did either Authenticom or  
5 SelectQu ever suffer a security data breach?

6 A Not to my knowledge.

7 Q Are you aware of any dealer ever expressing concern over  
8 the data security offered by either Authenticom or SelectQu?

9 A No.

10 Q Which DMS providers are most commonly used by your dealer  
11 customers?

12 A Overwhelmingly it's Reynolds and Reynolds and CDK. I would  
13 say our customer base is roughly that 70%/30% split.

14 Q Did there come a time when Dominion stopped using  
15 Authenticom or SelectQu for dealers using the Reynolds DMS?

16 A Yes. We had a few products under our Autobase umbrella  
17 that were forced to go to RCI back in 2011.

18 Q Why?

19 A They were the products that, because of what was then the  
20 beginning of the blocking that we've heard so much about, really  
21 couldn't survive without closer to realtime -- it didn't need to  
22 be exactly realtime, but they couldn't live on daily feeds, and  
23 they needed to write back. We had our CRM product, Autobase,  
24 the one you asked about earlier, and we also had a Service  
25 Scheduler product that would have competed in the space with

1 XTime mentioned in the testimony before me.

2 Q Did the blocking you testified about lead Dominion to  
3 change its data integration provider for certain applications?

4 A For those two we had to go to RCI. The others we left with  
5 either Authenticom or SelectQu.

6 Q And if you already testified about this, I apologize.  
7 About what time frame was this?

8 A It was in 2011 that we actually signed.

9 Q In 2011 about how much was Dominion paying to Authenticom  
10 on a per-dealer/per-rooftop basis for the Sales Center data?

11 A So Authenticom wasn't the primary source for Sales Center,  
12 but they did use them. Authenticom at the time charged us \$45  
13 for the first 500 dealers and then \$22.50 for everything over,  
14 so the volume we were at then, the average would have been  
15 around \$35, maybe a little less than \$35.

16 Q During that same time period, about how much did Dominion  
17 pay to SelectQu on a per-dealer/per-rooftop basis?

18 A That was \$30 flat.

19 Q And how much did Reynolds charge Dominion for Sales  
20 Center's integration on a per-dealer basis when Sales Center  
21 first started using RCI?

22 A When they first started using RCI, the charge was -- well,  
23 they offered three data packages, but the data package most  
24 often used, almost always used, was \$247 compared to the \$30 we  
25 were paying SelectQu.

1 Q Now, after Reynolds began blocking Authenticom and  
2 SelectQu, was there ever a time you were able to serve  
3 dealerships using a Reynolds DMS with an integration provider  
4 other than RCI?

5 A Yes. So that would have been true of everything except  
6 Autobase, so we were on Autobase for RCI, but all of our other  
7 products continued to use Authenticom and SelectQu, and then  
8 about four years later, in 2015, when the blocking had just  
9 grown to a point of pain, we switched to DMI to have -- so it's  
10 confusing to people. We switched to DMI, owned by CDK, to pull  
11 Reynolds and Reynolds data.

12 Q How did that come about?

13 A I got a call from Kevin Distelhorst at CDK in early 2015,  
14 probably March or so, and he said that they had an agreement  
15 with Reynolds that would allow him to pull Reynolds and Reynolds  
16 data. It would protect me -- and the word he used I'll never  
17 forget -- from the "attack" Reynolds was giving us with data  
18 lockouts, and lockouts defined as what you've heard the last two  
19 days.

20 Q So did you switch from using Authenticom or SelectQu to  
21 using DMI?

22 A We did. We switched all of the products that were at  
23 Authenticom to DMI and most of the products that were at  
24 SelectQu to DMI during that time.

25 Q Did you have to pay fees to CDK to use DMI to provide the

1 data integration on Reynolds' DMS?

2 A Absolutely. We moved -- we were there for 15 months, and  
3 in that 15-month period we paid CDK for that data almost a  
4 million dollars.

5 Q What happened after the 15-month period was up?

6 A Well, that would have been the time during that 15-month  
7 period we were negotiating with Reynolds and Reynolds.  
8 Remember, we knew that CDK's grace period or safe haven or wind  
9 down, whatever you would want to call it, was going to end, and  
10 we knew the date. It was July of 2016. So we spent that time  
11 during that safe haven negotiating with Reynolds and Reynolds to  
12 move our data over -- or to move our dealers over so that we  
13 would be prepared once DMI stopped. So by the time it stopped,  
14 we had just given up on reaching a fair agreement with Reynolds  
15 and Reynolds.

16 Q How much does Reynolds charge for Sales Center RCI  
17 integration today?

18 A Well, that was actually one of the two main reasons we  
19 didn't sign RCI. They -- the charge that was 247 that you asked  
20 about a moment ago in 2011, six years later that same exact data  
21 package that was \$247 was going to cost us \$893 over a six-year  
22 period, and among other -- a lot of other reasons that we didn't  
23 like the contract, Mr. Schaefer himself called me personally on  
24 my mobile and said, "What can we do to make this go forward?"

25 And I said, "Well, there's a lot missing, but the one

1       that's absolutely a deal-breaker is we need some sort of price  
2       inflation index that we could follow," and I threw out numbers  
3       like, you know, 5% a year, 10% a year. "You got to pick a  
4       number, but we can't sign a contract that has no protection."  
5       We had just experienced over a six-year period, what is that,  
6       four times, 247 to 893. We couldn't sign our name on something  
7       with absolutely no index.

8             And his answer was, "That's an absolute deal-breaker," and  
9       it was.

10            And let me be clear, had he agreed to that, there were  
11       plenty of other things wrong with the contract, but that was one  
12       of them.

13       Q       Switch gears a little bit. For Dominion dealer customers  
14       who use a DMS provider other than CDK or Reynolds, what data  
15       integrators does Sales Center currently use?

16       A       So all of those are pretty easy to work with, but we still  
17       use a data integrator for those. We use -- some products use  
18       Authenticom. Some products use SelectQu.

19       Q       And about how much do you pay today per rooftop to  
20       Authenticom or SelectQu for those dealers that don't use either  
21       CDK or Reynolds for their DMS?

22       A       Still that \$30, a little less in some cases, but around 30.

23       Q       Okay. I'm going to talk about CDK now. Did CDK ever  
24       restrict the ability of Dominion's integrators to access CDK's  
25       DMS --

1 at NADA, and two NADAs prior I had lunch with Kevin, and we  
2 bad-mouthed Reynolds together, what evil people they were for  
3 blocking everyone. I certainly had plenty to say and so did he,  
4 and then two short years later in 2015 he was one and they were  
5 the blockers. The irony wasn't lost on me.

6 Q So the conversation you just testified about with  
7 Mr. Distelhorst was in 2013?

8 A '13.

9 Q Thank you. Today for dealers using CDK's DMS, what  
10 integration provider does Dominion use?

11 A I'm sorry. Repeat that again?

12 Q Sure. Today for dealers using CDK's DMS, what integrator  
13 provider does Dominion use?

14 A So we're in the final stages of 3PA certification. So for  
15 each product this answer will be slightly different, but broadly  
16 speaking we use DMI, which was requested -- actually required  
17 sort of by CDK for the last three or four months while we were  
18 doing our certification, and so most of our products are in the  
19 process today actually of transitioning from DMI to actual CDK's  
20 3PA program, and then a couple of our products never were able  
21 to comply to that move to DMI phase, so they still are SelectQu,  
22 but they too will be transitioning to 3PA in the next week or  
23 so.

24 Q Would you have preferred for some applications to use  
25 SelectQu or Authenticom?



1       A       I would have preferred for all of the applications to have  
2       remained at SelectQu or Authenticom.

3       Q       Why?

4       A       Their service was, in my opinion, better. It was  
5       absolutely at least as good by any definition, but I think  
6       better, and probably for us the most significant thing is if I  
7       get data through a certified means, whether it's CDK or Reynolds  
8       and Reynolds, I still -- arguably it's harder for me, but even  
9       if it were the same, I still have to send that data to somebody  
10      to enhance it, so when I used Authenticom or SelectQu, the data  
11      came from the DMS. It was clean, standardized, enhanced, and  
12      then sent to me, and when I got it, I was done.

13             Now I have to write routines that bring in the data from  
14      CDK or Reynolds and Reynolds, both more complicated than getting  
15      it from Authenticom to begin with, then package that data up,  
16      send it out to be enhanced. I happen to use Authenticom.  
17      There's about a million choices out there to enhance it, but  
18      then they enhance it, and then they send it back. So from a  
19      data flow point of view, I have to touch that data twice and  
20      keep it all separate, and it's difficult. It's technically  
21      difficult. It's technically challenging. It would be much  
22      simpler for me just to use an Authenticom or any of the other  
23      integrators that used to be out there or our very own SelectQu.

24      Q       We talked about pricing earlier. How much does CDK charge  
25      Dominion for Sales Center's 3PA integration?

1       A     I have to smile when you ask me that question. So compared  
2       to Reynolds' 893, it's cheap -- it's only \$457 -- until you  
3       compare it to that \$30 that I could have paid Authenticom.

4       Q     Do you acquire all dealer data on the CDK DMS through 3PA?

5       A     So our contract said that we had to get 100% of our dealers  
6       that were on CDK through the 3PA program, but as we went through  
7       the process of both negotiating and certifying, CDK made a few  
8       exceptions to where we got data on a few dealer groups.

9       Q     For those exceptions, how does Dominion acquire data for  
10      those dealerships?

11      A     So they made an exception for at least three dealer groups  
12      that I can think of, two were Group 1 and Lithia, both fairly  
13      large groups that most people would know of, and then they made  
14      a third exception, which was the most ironic to me, for the  
15      Leith Group. CDK said that we could get the data directly from  
16      those dealer groups, and, to be clear, we still had to pay for  
17      that data. We had to pay CDK to register them in the 3PA  
18      program, so we paid that \$457, but we were allowed to get the  
19      data directly from the dealership, which has a twist of irony  
20      with the Leith Group.

21            The dealership group, Leith, is able to send us the data  
22      that they send us because they pay SelectQu, our company, to  
23      extract it, so as you heard testimony earlier, extracting data  
24      from an -- from someone at the dealer is no easy task. So  
25      Leith, a pretty high-tech company, fairly large, probably

1 employs a dozen IT people, choose to pay SelectQu to get data  
2 out of CDK because it's that hard. They pay SelectQu, happens  
3 to be our company. SelectQu pulls it, sends it to Leith. Leith  
4 then sends it to me. Incidentally, then I send it to Steve to  
5 enhance, and then he sends it back, and I post it to the dealer  
6 on my website. You should be shaking your head now.

7 Q I don't have a diagram. In your experience are there any  
8 significant differences between the functionality or security of  
9 RCI and 3PA on the one hand and Authenticom or SelectQu on the  
10 other?

11 A Other than I don't have to send it to all those places, no.  
12 The data extraction, in very large terms -- you guys heard  
13 yesterday about APIs and File Transfer Protocols. In very large  
14 terms, every data extraction I get, whether it's from RCI or CDK  
15 or Steve or SelectQu, in very large, broad strokes, somebody  
16 collects the data and posts it on some connection, whether it's  
17 a predefined point like an API or a pre-established address like  
18 a file transfer -- an FTP folder -- we use SFPT; S stands for  
19 secure -- the data is dropped there or sent there or connected  
20 there. We get it pretty much the same way.

21 Now, because of the blocking, I'll have to confess that I  
22 get data more often through CDK's 3PA program, and I get data  
23 more often than with RCI for Autobase or Sales Center, but to be  
24 clear, that improvement on the frequency is not a technical  
25 restriction other than it's hard for an integrator to hit the

1       A     Well, not getting data for 189 of my 230 stores is a start,  
2     but the dealers hate it. The dealers complain about it. The  
3     testimony you heard about the pain and suffering is no joke,  
4     and, by the way, it hasn't always been as hard as it is now. It  
5     used to be a little easier. Dealers could at least select  
6     multiple files, and I couldn't tell you because I personally am  
7     not clicking the buttons on Reynolds and Reynolds about exactly  
8     the work flow, but dealers tell me all the time that it's harder  
9     to use now than it's ever been, so for Reynolds to imply that  
10    they're helping dealers do that is not true. And incidentally,  
11    I can't have -- remember my Sales Center people? I can't have  
12    any of them -- not a single dealer in the Sales Center world can  
13    send me data through dealer-initiated downloads. We're not  
14    allowed to mix those two.

15    Q     Shift gears again. Has Dominion been impacted by the use  
16    of RCI and 3PA?

17    A     Absolutely. So costs have skyrocketed. We haven't been  
18    successful in passing it through to the dealerships, so our  
19    earnings are way down. They completely destroyed the Scheduler  
20    product that was our competitor to XTime. SelectQu has been  
21    stripped of most of its profitability or all of its  
22    profitability and most of its revenue. The sales cycle has been  
23    damaged because of the challenges that salespeople have in the  
24    street because of the propaganda by Reynolds and CDK when we say  
25    we're not certified with RCI. Dealers have left us over either

1       their frustration of dealer-initiated downloads or, in CDK's  
2       case, the price increase that we told them we were about to pass  
3       through. So, yes, it's hurt us a lot.

4       Q     Final topic, Mr. Andreu. Can we talk about your RCI  
5       agreement with Reynolds? What limitations, if any, does  
6       Reynolds place on Dominion's ability to tell dealers how much it  
7       pays for integration?

8       A     It gags us completely. We can't tell them anything, so I'm  
9       expected to somehow pass through an \$893 charge on an \$1,152  
10      product without telling them why.

11      Q     Was Dominion ever accused of violating the price secrecy  
12      provisions in its contract?

13      A     We were.

14      Q     What did Reynolds say?

15      A     We put a line item on an invoice that said "integration  
16      fee," and at the time, by the way, that fee was \$195 is what we  
17      passed through. I don't recall what the offsetting Reynolds  
18      charge was, but since it started at \$247, you can bet \$195  
19      wasn't all of it.

20      Q     What was Reynolds' response to your passing through --  
21      communicating the pass-through?

22      A     They sent a nasty letter to the then-product manager of  
23      Sales Center, told us that we had -- defamation I think was on  
24      there. They said that we violated the secrecy requirement.  
25      They submitted -- they made us submit to an intimidating audit,

1 and ultimately we wrote them a check for \$100,000 or they were  
2 going to cut the RCI program off from our Sales Center product.

3 MR. MILLER: No further questions. Thank you.

4 THE COURT: Cross-examination.

5 MR. RYAN: Thank you, Your Honor.

6 CROSS-EXAMINATION

7 BY MR. RYAN:

8 Q Good morning, Mr. Andreu.

9 A Good morning.

10 Q I just want to clear a few things up. So your company is a  
11 DMS provider?

12 A Our company is an application provider, an integrator  
13 provider through SelectQu, and, yes, we do have a DMS, a small  
14 one, called ACCESS that services smaller dealers. About 400 is  
15 their customer account.

16 Q So you have 400 DMS clients?

17 A Yes, sir.

18 Q Okay. And on the applications, how many applications do  
19 you offer?

20 A It's hard to separate them exactly, but, let's see, we have  
21 CRM Sales Center. We have the equity product we market as  
22 DealActivator, Dealer Specialties inventory. We have a web  
23 product. We have a dealer marketing product we call Auto  
24 Revenue. We have a reputation management product called Prime,  
25 and then we have various forms of all of those. So I'd say six

1 general categories.

2 Q Is the app market in which you compete a marketplace with  
3 lots of competitors?

4 A Highly competitive.

5 Q And this may not be fair, but how many firms are out there  
6 providing different kinds of apps?

7 A I truly don't know.

8 Q You believe it's a highly competitive market as we sit here  
9 today?

10 A Yes.

11 Q Okay. You mentioned the fact that there are some two  
12 hundred and -- if I got the number right, there were 189 dealers  
13 who didn't get it right last week with respect to the download  
14 program out of 280 --

15 A 230.

16 Q 230, thank you. And so that means that you have -- you're  
17 working with 230 dealers who are using this download process?

18 A Correct.

19 Q Okay. Thank you. And you also mentioned that the dealers  
20 sometimes don't follow good data security practices?

21 A I think I said often don't follow good data practices with  
22 regard to the dealer-initiated downloads.

23 Q And you were pretty shocked by some of those practices, I  
24 took from your testimony?

25 A I was. To be frank, I was shocked that the process was to

1 download a plain text file to your local computer, which is the  
2 dealer-initiated download process.

3 Q And as a -- does SelectQu, does it compete with  
4 Authenticom?

5 A It does.

6 Q Does it compete with DMI?

7 A It does.

8 Q Does it compete with IntegraLink?

9 A It does.

10 Q And just -- who else is out there?

11 A Well, nowadays there's RCI competes with DMI and SelectQu  
12 and Authenticom. There's a few small, probably-manage-a-few-  
13 hundred-store integrators, but all of the big ones are out of  
14 the market. SIS comes to mind. It's been put out of business.  
15 There used to be -- I myself was in that space in the '90s.  
16 From '91 until really I developed DealActivator, I was in that  
17 space, did consulting, but they're mostly gone now.

18 Q And I thought I heard you use a term "Group 1 dealers."

19 A Yes, Group 1 is a name of a -- like comparable to Penske.  
20 Group 1 has -- I don't know their numbers -- 170 or 80 stores or  
21 so.

22 Q And are you familiar with the term "tier one dealers"?

23 A Well, I'm familiar with the term "tier one."

24 Q Tier one. What is that?

25 A Well, it means a little different in the OEM space than it



1 does in the marketing space, but, generally speaking, it's the  
2 OEM level of the chain. So most people would use tier one  
3 talking about OEM initiatives, tier two talking about regional  
4 initiatives, and then tier three talking about dealer  
5 initiatives. I'm not sure the context you're using it.

6 Q Okay. That's fine. I just wanted to see if I understood  
7 it. I don't, but I don't think that it matters.

8 How many car -- about how many car dealers in the United  
9 States are there, your best estimate, sir, that use DMSs?

10 A DMSs?

11 Q DMSs. Thank you.

12 A 15,000 or so.

13 Q 15,000, and those are all new car --

14 A I don't know the numbers exactly, but my universe, when  
15 I've designed my marketing and sales team, 15,000 is the number  
16 I would use. It's a little hard to count. You heard some  
17 testimony earlier about rooftops and franchises, and you could  
18 count it about a thousand ways, but 15,000 or so is pretty  
19 close.

20 THE COURT: A question was qualified about how many  
21 dealers use DMSs. Are there dealers that don't?

22 THE WITNESS: All of them use some sort of DMS. The  
23 testimony about the only viable choice is Reynolds and CDK, a  
24 lot of dealers would share that opinion. We have 400 that  
25 don't, clearly. They bought them from us. There's a pretty

1 good chunk who have bought DealerTrack, but it is a fairly  
2 popular decision, and it really has to do with the scalability.  
3 It has to do with those DMSs' relationships with the OEMs. So  
4 getting permission to communicate back and forth from the OEMs  
5 is difficult.

6 THE COURT: Like parts information, stuff like that.

7 THE WITNESS: Yeah, and financial reporting.

8 There's -- the barrier to entry to get in the DMS space is  
9 difficult. Dominion, for example, purchased the company ACCESS,  
10 and it had about 400 dealers. It still has about 400 dealers,  
11 and we purchased it for the -- we would call it the domain  
12 knowledge. We wanted to buy people who knew how to do this, and  
13 we spent about \$50 million trying to build another one and ended  
14 up flushing it.

15 So building one is hard. It's expensive. And I would say  
16 that CDK and Reynolds pretty much owns the market. The 28%,  
17 even in the past four or five years, is probably doubled.  
18 Somebody probably has that number, I don't know, but -- and  
19 what's driving them there is exactly this subject. It's hard.

20 THE COURT: I just want to make sure I understand.

21 There's no -- now, there's a little used car lot that I pass on  
22 the way to work. They don't look very sophisticated. They  
23 don't -- it's not a new car dealer, so they might not --

24 THE WITNESS: No, actually they probably do. Most of  
25 the auctions offer some cheap little DMS. Ironically, that's

1       how I got in the business in 1983. I wrote a little package for  
2       what was then called Florida Motors, little dirt lots, me and a  
3       couple guys. It was horrible but -- in retrospect, but it  
4       worked. So, no, every dealer at every size probably has  
5       something that runs their dealership.

6               THE COURT: Okay. And so then -- but a new car dealer,  
7       if you got a franchise to sell new cars, then --

8               THE WITNESS: You're getting a DMS.

9               THE COURT: All right. And then there's a lot fewer  
10      new car dealerships than there were, do the math, ten years ago.

11              THE WITNESS: There's fewer for sure.

12              THE COURT: Yeah.

13              THE WITNESS: I don't know the numbers exactly.

14              THE COURT: Okay. All right. Okay. Thanks.

15      BY MR. RYAN:

16      Q       Are you familiar with a company by the name of SIS?

17      A       I am.

18      Q       And what do they do?

19      A       Well, nothing now, but they used to be integrators. They  
20      also did forms programming. I competed with them in that space  
21      in the '90s. Phil Battista owned it, and he, I believe, has  
22      closed it completely. If he does something still today, I  
23      certainly didn't know that. I thought he retired completely.

24              MR. RYAN: Thank you.

25              THE COURT: Cross for Reynolds.

1 MR. ROSS: Yes, Your Honor. Just a few.

2 CROSS-EXAMINATION

3 BY MR. ROSS:

4 Q Mr. Andreu, I thought I heard a reference a few minutes ago  
5 to RCI competing in the data integration market?

6 A Sure.

7 Q Just to make sure there's no misunderstanding, RCI is not a  
8 product that is offered or works or competes in the space of  
9 other DMS integration, that is other than Reynolds, is it?

10 A So what you said is correct. It competes, though the --  
11 other people compete with RCI, and RCI, in my opinion, competes  
12 with them for that percentage of dealers that I have that use  
13 Reynolds and Reynolds' DMS. So it used to be about a third.  
14 It's less than that now, but about a third of my dealers used  
15 Reynolds and Reynolds, and I had many choices. RCI was one of  
16 them.

17 Q RCI is a part of the Reynolds DMS, right?

18 A I would say it's an integrator. I'm not sure where you're  
19 drawing that line.

20 Q You're contending that RCI is some sort of a separate  
21 entity?

22 A RCI takes DMS data from the Reynolds machine and sends it  
23 to me, the vendor. I would call that an integrator.

24 Q What is RCI?

25 A Reynolds Certified Interface.

1       A       So if you're asking me has Reynolds ever said, "Do less  
2       integration, less innovation, less services to the dealer, and  
3       we'll charge you less money," I'm sure they have.

4               MR. ROSS: I have no further questions.

5               THE COURT: Any redirect?

6               MR. MILLER: No, Your Honor.

7               THE COURT: Thank you very much, Mr. Andreu.

8               THE WITNESS: Thank you.

9               (Witness excused at 9:23 a.m.)

10              THE COURT: Next witness.

11              MR. MILLER: Your Honor, the plaintiffs call Matt  
12       Rodeghero.

13              THE COURT: Very good.

14              **MATTHEW RODEGHERO, PLAINTIFF'S WITNESS, SWORN,**

15              MR. MILLER: Your Honor, we don't have a fancy binder,  
16       but I have two loose exhibits. Would you like us to hand  
17       those --

18              THE COURT: Yes, by all means.

19              MR. MILLER: Copies for the opposing counsel and one  
20       for the witness too, please, Jennifer.

21                              DIRECT EXAMINATION

22       BY MR. MILLER:

23       Q       Good morning or -- yes, it is still morning. Good morning,  
24       Mr. Rodeghero. Can you please state your name for the record.

25       A       Yeah. My name is Matthew Rodeghero.

MATTHEW RODEGHERO - DIRECT

1 Q Where do you work?

2 A I work at AutoLoop.

3 Q How long have you been an employee of AutoLoop?

4 A Nine years.

5 Q What is your position?

6 A I'm the chief product officer of AutoLoop.

7 Q Can you briefly describe AutoLoop's business and products?

8 A Absolutely. We are one of the leading customer attention  
9 marketing service and sales retention products in the  
10 marketplace. We also provide a CRM, scheduling tools, service  
11 drive check-in process, work flow management for dealerships.

12 Q What kind of dealer data does the full suite of AutoLoop  
13 applications need to function?

14 A We use quite a bit of data. We have some very high data  
15 demands. We use -- we pull all the ROs, open and closed. We  
16 pull deals, appointments, parts inventory -- well, that's a  
17 request that we have outstanding -- parts orders, special order  
18 parts, also customer information.

19 Q And can you remind the Court what ROs stands for?

20 A Yes. Repair orders. It's a service ticket.

21 Q How does AutoLoop typically get the data -- dealer data it  
22 needs?

23 A We use a third-party integrator where we can. Where we  
24 can't, we use RCI and CDK's interfaces.

25 Q Why do you use third-party integrators?

1 A We use third-party integrator -- we actually use SIS  
2 currently. They still do have some business through non-RCI and  
3 non-CDK dealerships. We use them because they provide a  
4 one-stop where we can come in and extract data for all of the  
5 different DMS types.

6 Q Historically when you purchase data integration services  
7 from SIS, how much did you pay for the full suite of AutoLoop's  
8 products?

9 A \$39.

10 Q Were you satisfied with SIS's service?

11 A Yeah, absolutely.

12 Q Did you consider SIS's services to be secure?

13 A Yeah, we did.

14 THE COURT: How would you know?

15 THE WITNESS: We didn't get into the details with them.  
16 We asked them what they do. They said they had some standard  
17 practices they do, and they carried insurance policies for it,  
18 and so we took them at face value on that.

19 THE COURT: Okay. Good. Thank you.

20 BY MR. MILLER:

21 Q I want to move quickly through this. So was there a time  
22 when you stopped using SIS for integration with Reynolds  
23 dealers?

24 A With Reynolds dealers, yes. We stopped in 2015.

25 Q Why?

1       A       Because we got notice from SIS that they would no longer be  
2       continuing to support integration for RCI. Leading up to that  
3       point, we had been undergoing some stress with their ability to  
4       support the integration. They were being blocked by Reynolds  
5       and Reynolds, and they were not being allowed to extract the  
6       data on a day-to-day basis.

7       Q       Could you briefly describe how Reynolds' blocking impacted  
8       AutoLoop's business?

9       A       Absolutely. It was kind of a day-to-day struggle for us.  
10       We would routinely come in in the morning and have anywhere  
11       between a hundred to 500 stores that would be shut off and not  
12       able to run our software tools, so we would have support tickets  
13       from every one of our dealerships with very colorful language  
14       telling us why they're upset with us and that they needed to get  
15       the system back up and running. Our engineering team was  
16       incredibly taxed during that time trying to come up with  
17       solutions and work with SIS to get the data feeds back up in  
18       place. It took all of our development resources away from  
19       developing products and focused them on trying to sustain  
20       running our dealerships' integration.

21       Q       Did AutoLoop eventually become RCI certified?

22       A       Yes, we did.

23       Q       Approximately when?

24       A       That was 2015 we signed the contract with them, and then it  
25       took a bit of time to finish the integration and certify and



1       officially transition all of our dealerships over.

2       Q     In 2015 how much did Reynolds charge AutoLoop for RCI  
3       integration for a dealer using, say, the full suite of  
4       AutoLoop's products?

5       A     We were somewhere in the \$700 range, in the mid-700s.

6       Q     And today how much does Reynolds charge AutoLoop for  
7       integration for that suite of products?

8       A     Our most recent price increase took us to \$835 for that  
9       full package.

10      Q     In addition to the package cost, are there any additional  
11      fees that Reynolds charges?

12      A     Yes, there are. As of recently, Reynolds has added an  
13      additional cost to the RCI package which relates to anytime we  
14      push a transaction back to the DMS, there's an additional 5 cent  
15      charge that is added to it. For an example, when we need to  
16      write an appointment to the DMS, if we have to update the  
17      customer information, that's a transaction, and then if we have  
18      to push the appointment into the DMS, that's a transaction as  
19      well. So for a customer to go online to schedule an appointment  
20      for a dealership, that costs an extra 10 cents. On average that  
21      costs us about \$70 a dealership extra on top of the normal  
22      integration costs. That's an average. I have dealerships that  
23      run over \$1,000 a month in transactional charges just -- that's  
24      just the transactions, so that would be in addition to the \$835  
25      cost for the flat integration fee.

1 Q For dealers using a DMS other than CDK and Reynolds, how  
2 much do you pay for integration for that full suite of products  
3 today?

4 A For the full suite for all transactions, reading, writing,  
5 and posting information back to the DMS, I pay \$79 right now.

6 Q So we talked about Reynolds blocking. If we could switch  
7 to CDK. Did CDK block SIS as well?

8 A CDK to my experience did not block --

9 THE COURT: I'm not sure I understand that answer.

10 THE WITNESS: Sorry.

11 THE COURT: Okay. So this is non-CDK and Reynolds.  
12 You pay \$79 a dealer from -- and that's the remaining business  
13 with SIS?

14 THE WITNESS: Yes, that's the remaining business with  
15 SIS.

16 THE COURT: That's \$79 from the vestigial SIS  
17 operation, right?

18 THE WITNESS: Yes, exactly.

19 THE COURT: All right. I got it. Thank you.

20 BY MR. MILLER:

21 Q So I'd asked did CDK block SIS as well?

22 A No, they didn't. We heard rumors in the street, as you  
23 heard from Dominion, that there was -- the word was it was  
24 coming, and so at that point we were also -- we were also  
25 receiving a push from one of our manufacturer customers that

1       they wanted us to be certified through CDK, a certified program,  
2       so we opted to not go through the pain again, and we went with  
3       the direct integration.

4       Q     Have you fully transitioned to 3PA yet?

5       A     We have not. We're still in the middle of finishing the  
6       certification. We're about 40% through the transition right  
7       now.

8       Q     Under your current contract with CDK, will you be able to  
9       keep using SIS on all your dealerships?

10      A     We can only use SIS for non-CDK and Reynolds business. We  
11      have to transition all of our accounts for all products over to  
12      CDK interface.

13      Q     How much did CDK charge AutoLoop for 3PA integration when  
14      you first joined?

15      A     We were around \$690, \$694, something like that.

16      Q     Did you have any prior agreements with CDK that permitted  
17      any of your products to access the CDK DMS?

18      A     Yeah, we did. We actually -- we acquired a company in 2014  
19      called CAR-Research or CAR-Interactive. They're a CRM company.  
20      They were previously certified under the ADP certification  
21      program, and they were paying about \$160 a month for that  
22      integration.

23      Q     And so for -- the price for your access to the CDK database  
24      went from approximately \$160 in 2014 to \$694 in 2016; is that  
25      correct?

1       A       Yeah, that's correct. So when we acquired that company, we  
2       transitioned into the Certified Integration for our AutoLoop  
3       business as well. They required us to go -- re-go through the  
4       integration process, and they transitioned us onto a 3PA  
5       contract, and with that contract came the new pricing structure.  
6       So I had to go back to my existing CRM business and move them  
7       from the \$160 integration fee to the more expensive integration  
8       fee, and during that transition I -- you know, we went through  
9       the documentation, and the documentation for the API  
10      implementation that we did from the CAR-Research integration to  
11      the current integration was the same documentation, so I asked  
12      them, you know, "Is this any new or improved integration?"

13             And they said, "Well, it's just our new 3PA program that  
14      we're rolling out," but all the implementation was still the  
15      same for my team.

16      Q       Were there any noticeable product improvements?

17      A       No, there were none.

18      Q       Today how much does AutoLoop pay CDK for integration for  
19      its full suite of products?

20      A       We have a price increase coming at the end of this month.  
21      July 1st we'll be paying \$735.

22      Q       Do you pass on the RCI and 3PA fees to dealers?

23      A       Yes, we do. We pass them straight through.

24      Q       Does AutoLoop add a markup or margin on top of the  
25      integration fees?

1 A No. We've not been in the business of trying to get money  
2 off of the transactions. We're just trying to sell software.

3 Q In your experience are 3PA and RCI significantly better  
4 integration services than SIS?

5 A No, not particularly. I haven't found anything about them  
6 that's any better or improved on the transactions that I would  
7 get from SIS.

8 Q Are there any ways in which RCI and 3PA are more limited  
9 than SIS?

10 A Yeah. I did lose some functionality when I made the  
11 transition to both of the different systems in different ways.  
12 With the RCI system I lost the ability to make some of the  
13 notifications that I do around parts, special order parts  
14 orders. I can no longer get the information indicating when I  
15 can make those notifications through the RCI program. I also  
16 lost the ability to do some pushback information, and with CDK  
17 there was some things I lost the ability to do as well.

18 Q So why does AutoLoop pay these higher integration fees from  
19 Reynolds and CDK?

20 A It was a decision where we had to look at the things that  
21 we were dealing with on the support basis and the constant loss  
22 of business and upset dealerships saying, "Hey, you guys, you  
23 got to keep your system up. We can't keep running our business  
24 with your software if your software doesn't work."

25 So at that point it was a decision. We're like, "Okay. We

1 have to keep the software running so we have to pay this cost."

2 Q If there wasn't the threat of blocking from the defendants,  
3 would you rather use SIS?

4 A We would be glad to go back to SIS.

5 Q I want to move to --

6 THE COURT: Just -- I mean, the cost is so clear. Why  
7 wouldn't you rather pay \$79 instead of \$735.

8 THE WITNESS: Yeah, that's exactly --

9 THE COURT: That's the primary thing --

10 THE WITNESS: That's the primary thing. The other  
11 thing we've run into from time to time with them is -- an  
12 example would be is when we go back to -- when I worked with  
13 SIS, if I needed additional information or I needed to develop a  
14 new product that I wanted to give to the dealerships because  
15 they've asked for a new functionality, I would go to them and  
16 say, "Hey, can you get this additional data?" They would work  
17 it out. They would come back and provide that data to me.

18 I make those requests with CDK and Reynolds, and if it can  
19 be done, the time lines are between six months to a year with  
20 additional recertification fees and paying for recertifying and  
21 retesting. With SIS it was not difficult at all. So the  
22 business relationship has changed drastically.

23 THE COURT: Thank you.

24 MR. MILLER: Thank you, Your Honor.

25 BY MR. MILLER:

1 the future as I can possibly deliver it.

2 MS. GULLEY: No, no. Thank you, Your Honor. For all  
3 of the opposite reasons that the plaintiff said, I'm sure you  
4 know we'd welcome an opinion from the bench as well, but, you  
5 know, I think one thing to think about -- and, first of all,  
6 your suggestion of, you know, coming back and talking about  
7 that, although it does mean we will be very tired, is -- that  
8 makes sense.

9 But in terms of what we have to do, I mean, assuming that  
10 there's some chance of success on the merits, which, of course,  
11 we think there is not, and assuming there's some imminent harm,  
12 which we think there's not, and so on and so forth down the  
13 elements, say you are going to issue an injunction, you know, in  
14 that case, you know, under Rule 65 you're going to have to --  
15 you've heard kind of the testimony about, well, this is the  
16 status quo, so at least in the case of my client, you have to  
17 tell them to do something, and you got to do it in reasonable  
18 detail. And, you know, you'll read in the declarations, you'll  
19 hear from the witnesses that that's impossible for them, and so  
20 there's some question there about, you know -- we've got a  
21 couple hours left today; our case hasn't started -- just to get  
22 through kind of answering the plaintiff's case much less that.  
23 Okay? If we get there, I don't think -- I think you need to  
24 hear more. That's all I would suggest.

25 THE COURT: All right.

1 MS. MILLER: For our part, Your Honor, we agree. I  
2 think you'll have a much more full picture of the facts that you  
3 need to evaluate. It's not just about the exhibits, as  
4 Ms. Gulley just said. You're going to hear from our witnesses,  
5 and we believe that once you evaluate those, you'll reach your  
6 decision, but, yes, there's more to it than simply just that  
7 evaluation, and we would have to -- if Your Honor is inclined to  
8 issue an injunction, there would have to be, I think, some  
9 discussion of what that injunction would look like because there  
10 are practical problems.

11 MS. GULLEY: With witnesses.

12 THE COURT: Yeah, go ahead.

13 MR. PANNER: Thank you, Your Honor. I do think that  
14 the nature of an injunction is not as complicated as the  
15 defendants are suggesting.

16 THE COURT: So just to be clear, you're suggesting that  
17 if at the end of the day I think an injunction is warranted, you  
18 think I have to have another hearing then and take witness  
19 testimony about what the injunction should be.

20 MS. GULLEY: I think you will hear more evidence on  
21 this today like what that would mean to Reynolds if you  
22 literally -- if you look at the proposed order that the  
23 plaintiffs suggest, which is basically eviscerate all their  
24 contracts with third-parties, eviscerate all their contracts  
25 with dealers, and order them to, quote/unquote, "stop blocking,"



1 something they have been doing for a decade, yeah, I think you  
2 would need to understand the -- I know you've heard a lot of  
3 information about the technology but literally the guts and  
4 bolts of what it means to do whatever -- I honestly don't know  
5 exactly what they're asking for but -- short of stop blocking,  
6 but to understand that, I mean, I think we'd have to know or  
7 else we'd be down here every day, right, saying, "Oh, they  
8 violated the injunction," when we're just doing normal business.

9 THE COURT: Well, just as a practical matter, I take  
10 your point. We have to have an injunction that's reasonably  
11 clear and that articulates what has to happen, but I really  
12 hadn't anticipated that I'd have to have another hearing and  
13 hear more witnesses to figure out what the injunction would be  
14 if I were to grant it.

15 MS. GULLEY: I don't want to borrow trouble. Hopefully  
16 we don't.

17 THE COURT: That's not usually how we roll on these  
18 things, so, you know, I get the lay of the land from what people  
19 tell me. It highlights to me the difficulties that would be  
20 imposed in granting the injunction, and, frankly, it's probably  
21 more common than not that I'm not persuaded by some simplistic  
22 sweeping injunction that plaintiffs propose. I mean, usually  
23 they don't get exactly what they want.

24 MS. GULLEY: Sure.

25 THE COURT: That's even in the case where I grant them.